

## SENATE SUBSTITUTE

FOR

## SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 286

## AN ACT

To repeal sections 208.480, 208.565, 338.501, 338.515, 338.520, 338.525, 338.545, and 338.550, RSMo, and to enact in lieu thereof seven new sections relating to the health care programs, with an emergency clause for a certain section.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1           Section A. Sections 208.480, 208.565, 338.501, 338.515,  
2           338.520, 338.525, 338.545, and 338.550, RSMo, are repealed and  
3           seven new sections enacted in lieu thereof, to be known as  
4           sections 208.477, 208.478, 208.480, 208.565, 338.515, 338.520,  
5           and 338.550, to read as follows:

6           208.477. 1. For each state fiscal year, if the criteria  
7           used to determine eligibility for Medicaid coverage under a  
8           section 1115 waiver are more restrictive than those in place in  
9           state fiscal year 2003, the division of medical services shall:

10          (1) Reduce the federal reimbursement allowance assessment  
11          for that fiscal year. The reduction shall equal the amount of  
12          federal reimbursement allowance appropriated to fund the section  
13          1115 waiver in state fiscal year 2002 multiplied by the  
14          percentage decrease in Medicaid waiver enrollment as a result of  
15          using the more restrictive waiver eligibility standards; and

16          (2) Increase cost of the uninsured payments for that fiscal

1 year. The increased payments shall offset the higher uninsured  
2 costs resulting from the use of more restrictive Medicaid waiver  
3 eligibility criteria, as determined by the department of social  
4 services.

5 208.478. 1. For each state fiscal year beginning on or  
6 after July 1, 2003, the amount of appropriations made to fund  
7 Medicaid graduate medical education and enhanced graduate medical  
8 education payments pursuant to subsections (19) and (21) of 13  
9 CSR 70-10.010 shall not be less than the amount paid for such  
10 purposes for state fiscal year 2002.

11 2. Sections 208.453 to 208.480 shall expire one hundred  
12 eighty days after the end of any state fiscal year in which the  
13 requirements of subsection 1 of this section were not met, unless  
14 during such one hundred eighty day period, payments are adjusted  
15 prospectively by the director of the department of social  
16 services to comply with the requirements of subsection 1 of this  
17 section.

18 208.480. Notwithstanding the provisions of section 208.471  
19 to the contrary, sections 208.453 to 208.480 shall expire on  
20 September 30, [2004] 2005.

21 208.565. 1. The division shall negotiate with  
22 manufacturers for participation in the program. The division  
23 shall issue a certificate of participation to pharmaceutical  
24 manufacturers participating in the Missouri Senior Rx program. A  
25 pharmaceutical manufacturer may apply for participation in the  
26 program with an application form prescribed by the commission. A  
27 certificate of participation shall remain in effect for an  
28 initial period of not less than one year and shall be

1 automatically renewed unless terminated by either the  
2 manufacturer or the state with sixty days' notification.

3       2. For all transactions occurring prior to July 1, 2003,  
4 the rebate amount for each drug shall be fifteen percent of the  
5 average manufacturers' price as defined pursuant to 42 U.S.C.  
6 1396r-8(k)(1). For all transactions occurring on or after July  
7 1, 2003, the rebate amount for [each drug] name brand  
8 prescription drugs shall be fifteen percent and the rebate amount  
9 for generic prescription drugs shall be eleven percent of the  
10 average manufacturers' price as defined pursuant to 42 U.S.C.  
11 1396r-8(k)(1). No other discounts shall apply. In order to  
12 receive a certificate of participation a manufacturer or  
13 distributor participating in the Missouri Senior Rx program shall  
14 provide the division of aging the average manufacturers' price  
15 for their contracted products. The following shall apply to the  
16 providing of average manufacturers' price information to the  
17 division of aging:

18       (1) Any manufacturer or distributor with an agreement under  
19 this section that knowingly provides false information is subject  
20 to a civil penalty in an amount not to exceed one hundred  
21 thousand dollars for each provision of false information. Such  
22 penalties shall be in addition to other penalties as prescribed  
23 by law;

24       (2) Notwithstanding any other provision of law, information  
25 disclosed by manufacturers or wholesalers pursuant to this  
26 subsection or under an agreement with the division pursuant to  
27 this section is confidential and shall not be disclosed by the  
28 division or any other state agency or contractor therein in any

1 form which discloses the identity of a specific manufacturer or  
2 wholesaler or prices charged for drugs by such manufacturer or  
3 wholesaler, except to permit the state auditor to review the  
4 information provided and the division of medical services for  
5 rebate administration.

6 3. All rebates received through the program shall be used  
7 toward refunding the program. If a pharmaceutical manufacturer  
8 refuses to participate in the rebate program, such refusal shall  
9 not affect the manufacturer's status under the current Medicaid  
10 program. There shall be no drug formulary, prior approval  
11 system, or any similar restriction imposed on the coverage of  
12 outpatient drugs made by pharmaceutical manufacturers who have  
13 agreements to pay rebates for drugs utilized in the Missouri  
14 Senior Rx program, provided that such outpatient drugs were  
15 approved by the Food and Drug Administration.

16 4. Any prescription drug of a manufacturer that does not  
17 participate in the program shall not be reimbursable.

18 338.515. The tax imposed by sections 338.500 to 338.550  
19 shall become effective July 1, [2002] 2003, or the effective date  
20 of sections 338.500 to 338.550, whichever is later.

21 338.520. 1. The determination of the amount of tax due  
22 shall be the monthly gross retail prescription receipts reported  
23 to the department of revenue multiplied by the tax rate  
24 established by rule by the department of social services. Such  
25 tax rate may be a graduated rate based on gross retail  
26 prescription receipts and shall not exceed a rate of six percent  
27 per annum of gross retail prescription receipts; provided, that  
28 such rate shall not exceed one-tenth of one percent per annum in

1 the case of licensed pharmacies of which eighty percent or more  
2 of such gross receipts are attributable to prescription drugs  
3 that are delivered directly to the patient via common carrier, by  
4 mail, or a courier service.

5 2. The department of social services shall notify each  
6 licensed retail pharmacy of the amount of tax due. Such amount  
7 may be paid in increments over the balance of the assessment  
8 period.

9 3. The department of social services may adjust the tax  
10 rate quarterly on a prospective basis. The department of social  
11 services may adjust more frequently for individual providers if  
12 there is a substantial and statistically significant change in  
13 their pharmacy sales characteristics. The department of social  
14 services may define such adjustment criteria by rule.

15 338.550. 1. The pharmacy tax required by sections 338.500  
16 to 338.550 shall [be the subject of an annual health care cost  
17 impact study commissioned by the department of insurance to be  
18 completed prior to or on January 1, 2003, and each year the tax  
19 is in effect. The report shall be submitted to the speaker of  
20 the house, president pro tem of the senate, and the governor.  
21 This study shall employ an independent economist and an  
22 independent actuary paid for by the state's department of social  
23 services. The department shall seek the advice and input from  
24 the department of social services, business health care  
25 purchasers, as well as health care insurers in the selection of  
26 the economist and actuary. This study shall assess the degree of  
27 health care costs shifted to individual Missourians and  
28 individual and group health plans resulting from this tax.

1       2.] expire ninety days after any one or more of the  
2 following conditions are met:

3       (1) The aggregate dispensing fee paid to pharmacists per  
4 prescription is less than the fiscal year 2003 dispensing fees  
5 reimbursement amount; or

6       (2) The formula used to calculate the reimbursement for  
7 products dispensed by pharmacies is changed resulting in lower  
8 reimbursement in the aggregate than provided in fiscal year 2003;  
9 or

10       (3) June 30, 2005.

11  
12       The provisions of sections 338.500 to 338.550 shall not apply to  
13 pharmacies domiciled or headquartered outside this state which  
14 are engaged in prescription drug sales that are delivered  
15 directly to patients within this state via common carrier, mail  
16 or a carrier service.

17       [3.] 2. Sections 338.500 to 338.550 shall expire on June  
18 30, 2003.

19       [338.501. In fiscal year 2003, the amount  
20 generated by the tax imposed pursuant to section  
21 338.500, less any amount paid pursuant to section  
22 338.545, shall be used in the formula necessary to  
23 qualify for the calculations included in house bill  
24 1102, section 2.325 through section 2.333 as passed by  
25 the ninety-first general assembly, second regular  
26 session.]

27  
28       [338.525. If a pharmacy's gross retail  
29 prescription receipts are included in the revenue  
30 assessed by the federal reimbursement allowance or the  
31 nursing facility reimbursement allowance, the  
32 proportion of those taxes paid or the entire tax due  
33 shall be allowed as a credit for the pharmacy tax due  
34 pursuant to section 338.500.]

35  
36       [338.545. 1. The Medicaid pharmacy dispensing

1 fee shall be adjusted to include a supplemental payment  
2 amount equal to the tax assessment due plus ten  
3 percent.

4 2. The amount of the supplemental payment shall  
5 be adjusted once annually beginning July first or once  
6 annually after the initial start date of the pharmacy  
7 tax, whichever is later.

8 3. If the pharmacy tax required by sections  
9 338.500 to 338.550 is declared invalid, the pharmacy  
10 dispensing fee for the Medicaid program shall be the  
11 same as the amount required on July 1, 2001.]  
12

13 Section B. Because immediate action is necessary to ensure  
14 the fiscal stability of the Senior Rx program, the repeal and  
15 reenactment of section 208.565 of this act is deemed necessary  
16 for the immediate preservation of the public health, welfare,  
17 peace, and safety, and is hereby declared to be an emergency act  
18 within the meaning of the constitution, and the repeal and  
19 reenactment of section 208.565 of this act shall be in full force  
20 and effect upon its passage and approval.